

BID FORM

## MISSOURI DEPARTMENT OF TRANSPORTATION

## GENERAL SERVICES

830 MoDOT DRIVE - P. O. BOX 270

JEFFERSON CITY, MO 65109

REQUEST NO.	2-120109TV1
DATE	December 21, 2011
PAGE NO.	1
NO. OF PAGES	23

SEALED BIDS, SUBJECT TO THE ATTACHED CONDITIONS WILL  
BE RECEIVED AT THIS OFFICE UNTIL**2:00 p.m., Local Time, January 9, 2012**AND THEN PUBLICLY OPENED AND READ FOR FURNISHING  
THE FOLLOWING SUPPLIES OR SERVICES.**BIDS TO BE BASED F.O.B. MISSOURI DEPARTMENT OF  
TRANSPORTATION**

Submit net bid as cash discount stipulations will not be considered

Various MoDOT Locations

THE BIDDER MUST SIGN AND RETURN BEFORE DATE AND TIME SET FOR OPENING.

BUYER: Tom Veasman  
BUYER EMAIL:  
Tom.Veasman@modot.mo.gov

BUYER TELEPHONE: 573-522-4404

## SUPPLIES OR SERVICES

**COLD WEATHER TRAFFIC MARKING PAINT**To establish a contract to furnish "Cold Weather Traffic Marking Paint" with an effective date of  
Notice to Proceed and ending December 31, 2012 in accordance with the following pages.**Return sealed bid to the address shown at the top of this page.**

(SEE ATTACHED FOR TERMS, CONDITIONS, AND INSTRUCTIONS)

*In compliance with the above Request For Bid, and subject to all conditions thereof, the undersigned bidder agrees to furnish and deliver  
any or all the items on which prices were bid within the timeframe specified herein, after receipt of formal purchase order.*Date: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Federal I.D. No. \_\_\_\_\_  
Email Address: \_\_\_\_\_Firm Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
By (Signature): \_\_\_\_\_  
Type/Print Name \_\_\_\_\_Is your firm MBE  
certified? ☐ Yes ☐ NoTitle: \_\_\_\_\_  
Is your firm WBE  
certified? ☐ Yes ☐ No

## **1. GENERAL INFORMATION AND INTRODUCTION**

### **1.1 General Information:**

1.1.1 This document constitutes an invitation for competitive, sealed bids for the procurement of cold weather traffic marking paint as set forth herein.

1.1.2 Organization - This document, referred to as a Request for Bid (RFB), is divided into the following parts:

- 1) General Information and Introduction
- 2) Scope of Work
- 3) Bid Submission
- 4) Pricing Page(s)
- 5) Attachment A & B

Attachment A - MGS specifications - (Click on separate link to view Attachment)

Attachment B – State Map of Missouri - (Click on separate link to view Attachment)

- 6) Signature Page(s)
- 7) Terms and Conditions

### **1.2 Introduction:**

1.2.1 This Request For Bid seeks bids from qualified organizations to provide Cold Weather Traffic Marking Paint located throughout the State of Missouri with an effective contract period of Notice to Proceed through December 31, 2012, to the Missouri Highways and Transportation Commission (MHTC) and Missouri Department of Transportation (MoDOT). Each bid must be mailed in a sealed envelope to Mr. Tom Veasman, General Services Procurement Unit, 830 MoDOT Drive, P.O. Box 270, Jefferson City, Mo 65102, or hand-delivered in a sealed envelope to the General Services Procurement Office in the Highway and Transportation Building at 830 MoDOT Drive, Jefferson City, MO 65109. All questions regarding the RFB shall be submitted to Mr. Tom Veasman. Bids must be returned to the office of Mr. Tom Veasman no later than 2:00 p.m., CST, January 9, 2012.

#### **RFB Coordinator:**

**Ms. Tom Veasman, Procurement Agent**  
**Missouri Department of Transportation**  
**830 MoDOT Drive**  
**Jefferson City, MO 65109 (physical address)**

**PHONE: 573-522-4404**  
**FAX: 573-526-1218**

## **2. SCOPE OF WORK**

### **2.1 General Requirements:**

- 2.1.1 The contractor shall provide cold weather traffic marking paint (hereinafter referred to as traffic marking paint) on an as needed, if needed basis for the Missouri Highway and Transportation Commission (MHTC) and Missouri Department of Transportation (MoDOT), in accordance with the provisions and requirements stated herein.
- 2.1.2 The contractor shall provide all deliverables/services to the sole satisfaction of the MoDOT.
- 2.1.3 The contractor shall agree and understand the gallons of traffic marking paint specified herein is the estimated requirement for the striping season and is based on ideal conditions and therefore, subject to change due to weather and mechanical problems that may develop during the course of the striping season. MoDOT estimates, but does not guarantee, that the estimated quantities specified herein may be required/purchased.
- 2.1.4 MoDOT reserves the right to obtain "like or similar" products as specified herein from other manufacturers, exclusive of the contract, when use of such products is deemed in the best interest of the MoDOT.
- 2.1.5 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to provide the deliverables/services required herein.

### **2.2 Specific Requirements:**

- 2.2.1 The contractor shall insure all materials, equipment, and/or services comply with the Specifications #MGS-09-02B (Attachment A) and any other provisions outlined in the solicitation document.
- 2.2.2 The contractor shall insure that all containers are labeled with the appropriate hazardous material marking in accordance with the U.S. Department of Transportation regulation 173.115.
- 2.2.3 Prior to providing the traffic marking paint as specified herein, the contractor shall insure the contractor's totes are cleaned to insure no loose particles of paint are passed into MoDOT's striping equipment.
- 2.2.4 The contractor's totes shall be 250 gallon capacity and compatible with the waterborne paint specified herein. The contractor's totes shall be stainless steel or plastic containers surrounded by a supporting metal frame, and shall be capable of properly containing and delivering the paint.

### **2.3 Delivery Requirements:**

- 2.3.1 The contractor shall deliver traffic marking paint as specified herein to all MoDOT Districts located throughout the State of Missouri. The contractor shall deliver such traffic marking paint F.O.B. destination.
- 2.3.2 The contractor shall not deliver any traffic marking paint to MoDOT until being notified by MoDOT by telephone or purchase order.
- 2.3.3 The contractor shall have a maximum of 8 full working days from time of notification to deliver traffic marking paint. Full working days shall be defined as a 24 hour period, Monday through Friday, excluding Saturday, Sunday, and Holidays.
  - a. In the event traffic marking paint is not delivered within the 8 full working day period, MoDOT shall be compensated at a rate of \$500 per day until the traffic marking paint is delivered.

- b. The contractor shall agree and understand that such late delivery charge shall not be construed as a penalty.
- 2.3.4 The contractor shall deliver traffic marking paint in totes. Some of these totes shall be used as back up supplies on hand and may not be returned to the contractor until the end of the striping season.
- a. Tote delivery - Delivery by totes shall be required for each district.
    - 1) Totes shall be off-loaded at the locations specified by MoDOT.
    - 2) Empty totes shall remain at the MoDOT location that received the tote until MoDOT notifies the contractor there are sufficient quantities of empty totes to be picked up.
    - 3) The contractor shall pick up empty totes at no additional cost to MoDOT.
- 2.3.5 In the event MoDOT delays the contractor from unloading material, the contractor shall be compensated at the rate of \$24.00 per hour, computed to the nearest 15 minutes (One hour and 30 minutes shall be allowed for unloading material free of demurrage).
- a. If the contractor's material does not arrive at the time specified, the contractor shall compensate MoDOT at a rate of \$80.00 per hour, computed to the nearest 15 minutes.
  - b. If the contractor arrives prior to the specified time of delivery, unloading shall begin as soon as practical and allowed unloading time shall start when actual unloading begins, or at the specified arrival time, whichever is the earliest.
- 2.3.6 The contractor shall agree and understand that when more than one shipment of traffic marking paint is ordered for the same general location on the same day, the first shipment to arrive shall be unloaded first.
- a. If an earlier scheduled shipment does not arrive at the scheduled time, no demurrage shall be due the contractor on subsequent shipments, unless more than one hour and 30 minutes is required to unload each subsequent shipment.
  - b. If a shipment that did not arrive at the scheduled time arrives after unloading has begun on a subsequent shipment, the late shipment shall not be unloaded until all "on time" shipments have been unloaded. Demurrage due MoDOT shall be discontinued on the "late" shipment while the "on time" shipments are being unloaded.
  - c. Unloading of an earlier scheduled shipment shall not begin after 2:30 P.M. and demurrage due to MoDOT shall be discontinued at that time.
  - d. The contractor shall agree and understand the traffic marking paint belongs to the contractor and is the contractor's responsibility.

## **2.4 Additional Requirements:**

- 2.4.1 The contractor shall furnish the truck driver a copy of the bill of lading, manifest or truck ticket that is to be presented to MoDOT personnel at destination prior to unloading. A copy is also to be available to the MoDOT representative at the shipping point. The bill of lading, manifest or truck ticket shall show the following information: Type and color of traffic marking paint, batch or lot number, purchase order number, truck number, weights of truck before and after loading, destination, date and time loaded, name and location of source and a certification statement.

- 2.4.2 The contractor shall retain all records throughout the duration of the contract and for a period of three (3) years following the final payment by MoDOT to the contractor, including, but not limited to, shipping tickets, invoices, and batch tickets, indicating the origin and components of every batch of traffic marking paint provided under the contract. The contractor shall make these records available to MoDOT upon request and without cost to MoDOT, Federal Highway Administration, or their designees. In addition, the contractor shall compile and provide to MoDOT any other documentation MoDOT deems necessary to determine the origin, ingredients, and components of each batch of traffic marking paint.
- 2.4.3 The contractor shall include a certified batch card with each sample submitted to the Central Laboratory located at 1617 Missouri Blvd, Jefferson City, MO 65109, that clearly shows the date and time of manufacture and the manufacturer's batch or lot number. The batch card shall include the exact formulation used to manufacture the batch or lot of traffic marking paint represented. The quantity in pounds of each constituent or raw material used in the manufacture of that batch shall be listed on the card, along with the manufacturer and lot number for that constituent. If a batch or lot is composed of different mixers or blend tanks of traffic marking paint that are combined to create a single batch or lot for shipping, the quantities of each constituent shall be shown for each mixer or blend tank of traffic marking paint produced.

## **2.5 Liquidated Damage Requirements:**

- 2.5.1 The contractor shall agree and understand that providing traffic marking paint in accordance with the requirements stated herein is considered critical to the efficient operations of the MoDOT. However, since the amount of actual damages would be difficult to establish in the event the contractor fails to comply with the contractual requirements, the contractor shall agree and understand that the percentages identified below as liquidated damages shall be reasonable and fair under the circumstances.

- a. In the event the contractor fails to provide traffic marking paint in accordance with the contractual requirements specified herein, the contractor shall agree and understand that MoDOT shall solely determine which of the following percentages of deduction shall be assessed against the contractor for the contractor's noncompliance, and such shall be final and without recourse.

### **Deduction Rate Table**

<b>Minor</b>	<b>5 %</b>
<b>Slight</b>	<b>10 %</b>
<b>Moderate</b>	<b>25 %</b>
<b>Severe</b>	<b>50 %</b>

- b. The contractor shall agree and understand that in the event 10 or more batches in a contract year are determined not to comply with the contractual requirements, MoDOT reserves the right to increase the percentages listed above.
- c. The contractor shall agree and understand that such liquidated damages shall either be deducted from the total amount due the contractor or paid by the contractor as a direct payment to the MoDOT, at the sole discretion of the MoDOT.
- d. The contractor shall understand that the liquidated damages described herein shall not be construed as a penalty.
- e. The contractor shall agree and understand that all assessments of liquidated damages shall be in addition to, not in lieu of, the rights of the State of Missouri to pursue other appropriate remedies.
- f. The contractor shall understand and agree that all assessments of liquidated damages shall be within the discretion of each District as a separate entity, and shall be in addition to, not in lieu of, the rights of the

State of Missouri to pursue other appropriate remedies. The contractor shall understand and agree that each District's decision shall be individual, final, and without recourse.

## **2.6 Invoicing and Payment Requirements:**

- 2.6.1 The contractor shall submit an itemized invoice to the applicable requesting address for the completion of deliverables, as specified herein.
- 2.6.2 Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- 2.6.3 The contractor shall be paid in accordance with the firm, fixed prices stated on the pricing page(s) of this document after completion of deliverables specified herein and acceptance by MoDOT.
- 2.6.4 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.
- 2.6.5 MHTC is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Project Tax Exemption Certificate will be furnished to the successful Bidder upon request if applicable.
- 2.6.6 Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- 2.6.7 The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the contractor's expense.
- 2.6.8 The MHTC reserves the right to purchase goods and services using the state-purchasing card.

## **2.7 Other Contractual Requirements:**

- 2.7.1 Escalation Clause - In the event the contractor requests a price increase during the contract period (original contract period or contract renewal period), the contractor must provide a written request and documentation justifying the need for a price increase, and the amount of such price increase. MoDOT will review the contractor's written request and documentation, and decide if a price increase is to be granted at that particular time. The contractor shall understand and agree that MoDOT's decision shall be final and without recourse.
  - a. No price increase shall be granted during the first 3 months of the original contract period, or if applicable, first 3 months of a contract period for a renewal.
  - b. In the event a price increase is granted due to an approved escalation, the renewal percentage shall be based upon the current contract value.
- 2.7.2 Contract Bond - In the event a price increase is granted due to an approved escalation, the contractor shall increase their 100% contract bond, as specified elsewhere herein, to reflect the current contract value.
- 2.7.3 Inspection Specifications - MoDOT reserves the right to inspect the material at the point of manufacture, intermediate storage point, or at a destination which shall be at the discretion of MoDOT.

### 3. BID SUBMISSION

#### 3.1 Bid Submission Information:

3.1.1 All bids must be received in a sealed envelope clearly marked "Cold Weather Traffic Marking Paint".

3.1.2 All bids must be received at the following address no later than January 9, 2012 at 2:00 p.m., CST.

The Missouri Department of Transportation  
General Services – Procurement Division  
Attn: Tom Veasman  
830 MoDOT Drive  
Jefferson City, MO 65109 (physical address)

3.1.3 The bidder may withdraw, modify or correct his bid after it has been deposited with the Department provided such request is submitted in writing and received at the location designated for the bid opening prior to the time specified for opening bids. Such a request received as specified will be attached to the bid and the bid will be considered to have been modified accordingly. No bid may be modified after the time specified for the opening of bids.

#### 3.1.4 Open Competition / Request For Bid Document:

- a. Written questions regarding this RFB will be accepted via fax (573-526-1218), Email (Tom.Veasman@modot.mo.gov) or mail (Missouri Department of Transportation, Attn: Tom Veasman – General Services Procurement, P.O. Box 270, Jefferson City, MO 65102) until December 27, 2011 at 10:00 a.m. All questions must be directed to Tom Veasman. It is anticipated these questions will be answered in the form of an Addendum and posted to the Internet on or before December 28, 2011. It is the sole responsibility of the Offeror to look on the Internet for any and all communications throughout this procurement process.
- b. Bidders are cautioned that the only official position of the MoDOT is that which is issued by MoDOT in the RFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- c. MoDOT monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.

#### 3.1.5 Proposal/Bid Guaranty/Contract Bond:

- a. Each bid/proposal shall be accompanied by a Bid Bond, Certified Check, Cashier's Check or Bank Money Order payable to the Director of Revenue – Credit State Road Fund for an amount equal to Five Percent (5%) of the amount of the BID submitted. This is to act as a guarantee that the bidder, if awarded the contract, will furnish an acceptable performance and payment bond (Contract Bond) or a cashier's check, a bank money order or a certified check made payable to "Director of Revenue--Credit State Road Fund" in an amount equal to One Hundred (100%) of the contract price.
- b. If a BID BOND is used (in lieu of a certified check, cashier's check, or bank money order), it must be in the form provided and executed by the bidder as principal and by a surety company authorized to do business in the MoDOT as surety. The agent executing the same on behalf of the surety company must attach a current Power of Attorney setting forth his authority to execute the bond involved.
- c. Certified Checks, Cashier's Checks or Bank Money Orders of unsuccessful bidders will be returned as soon as the award is made. The checks or bank money orders of the successful bidder(s) will be retained until the contract is executed and a satisfactory Performance and Payment (Contract Bond) is furnished. Bid Bonds will not be returned except on specific request of the bidder.

- 3.1.6 *Prequalification of Bidder:* The bidder must provide proof of the following conditions to be considered for an award of contract.
- a. Bidder must have a plant in operation and devoted to manufacturing the travel marking paint being proposed for this bid. Such plant must be capable of producing batch sizes of at least 3500 gallons (13,250 liters).
  - b. Bidder must maintain a laboratory to scientifically control the traffic marking paint being proposed for this bid to assure accuracy and quality of formulation.
  - c. Bidder must have produced fast drying waterborne traffic marking paint over the past year (1) with a successful application record.
- 3.1.7 *Prequalification of Paint:*
- a. Prior to the bid opening date, the bidder must submit three (3) one-quart samples of each paint being bid. Each paint sample must be accompanied by a one (1) pint can of acrylic emulsion, and certified test results for all of the tests stipulated elsewhere herein. Each sample shall be identified by manufacturer's code number and type of paint to permit easy reference and identification. Samples are to be submitted to the Chemical Laboratory Director, Missouri Department of Transportation, Materials Laboratory, 1617 Missouri Blvd., Jefferson City, MO 65109. **If your firm has an approved 2011 statewide contract bid sample on file with the Missouri Department of Transportation Materials Laboratory meeting the specifications as attached, you are not required to submit the three (3) samples with the bid response.**
- 3.1.8 Bids will be reviewed to determine if the bid complies with the mandatory requirements, and to determine the lowest and best bid.
- 3.1.9 *Cost Determination* - The low bid shall be determined by multiplying the estimated quantity with the applicable unit price to obtain a total price. The renewal pricing shall not be included in the calculation when determining the low bid.
- 3.1.10 *Contract Award* – The contract will be awarded to the lowest responsive bidder determined as specified above.
- a. Award of this bid will be made on a “District-by-District” basis using the “lowest and best” principle of award.
  - b. No award of contract shall be made until the traffic marking paint has successfully complied with all of the requirements specified herein, and has been tested in the MoDOT Central Laboratory. **NOTE:** Normal-testing time is a minimum of thirty (30) calendar days.
  - c. MoDOT reserves the right to reject any or all bids, and no award is final until formally approved.



4. PRICING PAGE

4.1 Cold Weather Traffic Marking Paint - The bidder shall provide a firm, fixed price in the table below for the original contract period for providing the deliverables/services in accordance with the provisions and requirements of this RFB. All costs associated with providing the required deliverables/services shall be included in the price stated below.

COLD WEATHER TRAFFIC MARKING PAINT-TOTES					
Item #	Description and C/S Code	Estimated Qty. White Water Borne - C/S Code - 6306686700	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>	Estimated Qty. Yellow Water Borne - C/S Code - 6306686705	Original Contract Period <i>Firm, Fixed Per Gallon Price</i>
<i>Totes Delivery:</i>					
1 & 2	DISTRICT NW - ST. JOSEPH	1,500	\$	1,500	\$
3 & 4	DISTRICT NW - LATHROP	0	\$	0	\$
5 & 6	DISTRICT NE - MACON	9,000	\$	0	\$
7 & 8	DISTRICT NE - HANNIBAL	6,000	\$	15,000	\$
9 & 10	DISTRICT KC - KANSAS CITY	5,000	\$	5,000	\$
11 & 12	DISTRICT KC - WARRENSBURG	0	\$	0	\$
13 & 14	DISTRICT CD - JEFFERSON CITY	3,000	\$	3,000	\$
15 & 16	DISTRICT CD - ROLLA	0	\$	0	\$
17 & 18	DISTRICT SL - BALLWIN	12,000	\$	12,000	\$
19 & 20	DISTRICT SW - JOPLIN	3,000	\$	3,000	\$
21 & 22	DISTRICT SW - SPRINGFIELD	6,000	\$	6,000	\$
23 & 24	DISTRICT SE - WILLOW SPRINGS	3,000	\$	3,000	\$
25 & 26	DISTRICT SE - SIKESTON	3,000	\$	3,000	\$
27 & 28	DISTRICT SE - PARK HILLS	3,000	\$	3,000	\$
<b>TOTAL:</b>					<b>\$</b>

**PRICING PAGE CONTINUED**

In the event that MHTC exercises its options to renew the contract for two (2) additional one-year periods pursuant to the applicable provisions outlined in this document, the Bidder shall provide below the maximum percentage of increase or maximum percentage of decrease for each renewal period. The Bidder is cautioned that the percentages shall be computed against the ORIGINAL contract prices during renewal periods. If renewal percentages are not provided, the prices during renewal periods shall be the same as during the original contract period. Furthermore, the Bidder is advised that the MHTC does not automatically grant increases at the time of renewing the contract and that if an increase is requested, documentation of need must be provided at the time of renewal. If the option for renewal is exercised by MoDOT, the contractor shall agree to all terms and conditions of the RFB and all subsequent amendments.

1st Renewal Period Maximum % Increase over Original Bid Price	_____ %
1st Renewal Period Maximum % Decrease over Original Bid Price	_____ %
2nd Renewal Period Maximum % Increase over Original Bid Price	_____ %
2nd Renewal Period Maximum % Decrease over Original Bid Price	_____ %

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**Signature**

**Date**



**MATERIAL GENERAL SERVICES SPECIAL PROVISIONS  
COLD WEATHER WHITE AND YELLOW ACRYLIC WATERBORNE TRAFFIC MARKING  
PAINT MGS-09-02B**

**1.0 DESCRIPTION.** These specifications cover waterborne traffic paint for application on bituminous or Portland cement concrete pavements by department-owned spray equipment at application temperatures of 50 to 150°F (10 to 66°C). The paint shall be capable of receiving and holding glass beads for producing reflectorized traffic markings.

**1.1** The attention of the bidder is specifically directed to the following requirements: At the request of the purchaser, any paint furnished under this provision that has been contaminated with any form of material, cannot be satisfactorily applied, or that does not otherwise meet these specifications shall be disposed of by the supplier and immediately replaced with acceptable material entirely at the supplier's expense, including handling and transportation charges. Paint that has been delivered and is subsequently determined to fail to meet these specification requirements may be accepted for use by the purchaser after an appropriate deduction in purchase price as determined by MoDOT. It is to be expressly understood that these requirements are part of the bid.

**2.0 MATERIALS.** The paint shall not contain more than 500 ppm lead and/or more than 780 ppm chromium based on dry weight and shall have limited Volatile Organic Content (VOC), as noted herein.

**2.1 Acrylic Emulsion Polymer.** The acrylic emulsion polymer used in the manufacture of the paint shall be Rohm & Haas Rhoplex Fastrack XSR or equal. Later generation acrylic emulsions may be substituted only after concurrence of the Chemical Laboratory Director.

**2.2 General.** The finished paint shall be formulated and manufactured from first-grade materials and shall be a fast drying, water based, acrylic resin type paint capable of withstanding air and roadway temperatures without bleeding, staining, discoloring, or deforming. The dried paint film shall be capable of maintaining its original dimensions and placement without chipping, spalling, or cracking. In addition, it shall not deteriorate because of contact with sodium chloride, calcium chloride, mild alkalis and acids, or other ice control materials, or oil, gasoline or diesel fuel drippings from vehicles.

**2.3 Maintained retroreflectivity.** Photometric quantity to be measured is coefficient of retroreflective luminance ( $R_L$ ) in accordance with the requirements of ASTM E1347 for 15-meter geometry and ASTM E1710 for 30-meter geometry. The average  $R_L$  for concrete and asphalt surfaces shall be expressed in millicandelas per square meter per lux (millicandelas/m<sup>2</sup>/lux) and shall be at least 100 for 15 meter geometry or 75 for 30 meter geometry, when measured in the wheel path area.

**2.4 Mixed Paint.** The mixed paint shall conform to the following requirements.

**2.4.1** The paint shall be strained before filling, using a screen or strainer not coarser than 40 mesh or equivalent.

**2.4.2** The volatile content of the finished paint shall contain less than 150 grams of volatile organic matter per liter in accordance with ASTM D3960.

**2.4.3** The paint shall have the following properties:

**2.4.3.1 Physical Properties.**

Weight per Gallon, 77°F (25°C), lbs.	Report
Viscosity, 77°F (25°C), Krebs Units	(75-92)
Grind (Hegman Gage), min.	3
Laboratory Dry Time, ASTM D 711, minutes, max.	10
Dry Through Time, minutes, max.	150

**2.4.3.2 Color.** For white the color shall closely match Color Chip 37925 of Federal Standard 595b. For yellow, the color shall closely match Color Chip 33538 of Federal Standard 595b. Color determination will be made for markings and the diffuse daytime color of the markings shall conform to the below CIE Chromaticity coordinate limits. Color determination for liquid marking materials will be made over the black portion of a 2A or 5C Leneta Chart (or equal) at least twenty-four (24) hours after application of a 15-mil wet film. Color readings will be determined in accordance with the requirements of ASTM E1349 using CIE 1931 2° standard observer and CIE standard illuminant D65.

CIE CHROMATICITY COORDINATE LIMITS (INITIAL)								
Color	1		2		3		4	
	x	y	x	y	x	y	x	y
White	0.334	0.357	0.334	0.317	0.297	0.357	0.297	0.317
Yellow	0.531	0.483	0.531	0.429	0.471	0.483	0.471	0.429

**2.4.3.3 Flexibility.** The paint shall show no cracking or flaking when tested in accordance with Federal Specification TT-P-1952B.

**2.4.3.4 Water Resistance.** The paint shall conform to Federal Specification TT-P-1952B. There shall be no blistering or appreciable loss of adhesion, softening, or other deterioration after examination.

**2.4.3.5 Freeze-Thaw Stability.** The paint shall show no coagulation or change in consistency greater than 10 Krebs Units, when tested in accordance with Federal Specification TT-P-1952B.

**2.4.3.6 Heat Stability.** The paint shall show no coagulation, discoloration or change in consistency greater than 10 Krebs Units, when tested in accordance with Federal Specification TT-P-1952B.

**2.4.3.7 Dilution Test.** The paint shall be capable of dilution with water at all levels without curdling or precipitation such that the wet paint can be readily cleaned up with water only.

**2.4.3.8 Storage Stability.** After 30 days storage in three-quarters filled, closed container, the paint shall show no caking that cannot be readily remixed to a smooth, homogeneous state, no skinning, livering, curdling, or hard settling. The viscosity shall not change more than 5(10) Krebs Units from the viscosity of the original sample.

**2.4.3.9 Contrast Ratio.** The minimum contrast ratio (hiding power) shall be 0.99 for White and 0.98 for Yellow when drawn down with a 0.015 film applicator on a 2A or 5C Leneta Chart (or equal) and air-dried for 24 hours. Contrast Ratio = Black/White.

**2.4.3.10 Reflectance.** The daylight directional reflectance of the white paint shall not be less than 87 percent and not less than 50 percent for yellow paint of a 15 mil wet film applied to a 2A or 5C Leneta Chart (or equal). After drying for a minimum of 24 hours measure the reflectance of the paint over the black portion of the chart using colorimeter, ASTM E 1347.

**2.4.3.11 Bleeding.** The paint shall have a minimum-bleeding ratio of 0.97 when tested in accordance with Federal Specification TT-P-1952B. The asphalt saturated felt shall conform to ASTM D 226 for Type I.

**2.4.3.12 No-Tracking Time Field Test.** The paint shall dry to a no-tracking condition under traffic in three (3) minutes maximum when applied at  $15 \pm 2$  mil wet film thickness at  $120-140^{\circ}\text{F}$  ( $49-60^{\circ}\text{C}$ ), and from three (3) to ten (10) minutes when applied at ambient temperatures, with 6 pounds (2.72 kilograms) of glass beads per gallon (3.8 liters) of paint. "No tracking" shall be the time in minutes required for the line to withstand the running of a standard automobile over the line at a speed of approximately 40 mph (64 kph), simulating a passing procedure without tracking of the reflectorized line when viewed from a distance of 50 feet (15 meters).

**2.4.3.13 Dry Through Time.** The paint shall be applied to a non-absorbent substrate at a wet film thickness of  $15 \pm 1$  mils and placed in a humidity chamber controlled at  $90 \pm 5$  percent R.H. and  $72.5 \pm 2.5^{\circ}\text{F}$ . The dry through time shall be determined according to ASTM D 1640, except that the pressure exerted shall be the minimum needed to maintain contact with the thumb and film.

**3.0 PREQUALIFICATION OF BIDDER.** No bid will be considered unless the firm submitting the bid can meet the following conditions:

**3.1** That it has in operation a plant adequate for, and devoted to manufacture of the pavement marking paint that it proposes to furnish, and is capable of producing batch sizes of at least 3500 gallons (13,250 liters).

**3.2** That it maintains a laboratory to scientifically control the product bid upon to assure accuracy and quality of formulation.

**3.3** That it has produced fast drying waterborne traffic marking paint over the past year (1) with a successful application record.

**3.4** The Commission must receive proof of the above-listed items prior to the award of the contract.

#### **4.0 PREQUALIFICATION OF PAINT.**

**4.1** Prior to bid opening, each bidder shall submit three one-quart samples of each paint bid upon. Each paint sample shall be accompanied by one pint can of acrylic emulsion, and certified test results for all of the tests stipulated under Section 2.4 of this specification with the exception of the Storage Stability test stipulated under Section 2.4.3.8. Each sample shall be identified by manufacturer's code number and type of paint to permit easy reference and identification. Samples are to be submitted to the Chemical Laboratory Director, Missouri Department of Transportation, Materials Laboratory, 1617 Missouri Blvd., Jefferson City, MO 65109. MHTC will not award the contract until it receives the results of the paint tests.

**4.2** The bidder shall also submit certification that the paint offered for conformance to this specification will be manufactured to the same formulation throughout the contract period. The only deviations from this formulation that are permitted are a slight variation in the amount of thickener used in order to adjust the viscosity to the required level and the addition of sufficient water to replace that lost in processing of the paint.

**4.3** No award of bids will be made until the paint has met all the requirements specified herein, with the exception of the Storage Stability test stipulated under Section 2.4.3.8, when subjected to testing in the MoDOT Central Laboratory. NOTE: Normal testing time is a minimum of 30 calendar days.

**5.0 SERVICE.** Since proper application is deemed essential to the success of this process, the manufacturer shall have at least one technician available to instruct in the application of this type of paint. The technician shall be familiar with the application equipment and the materials, and shall have successful experience in the placing of fast drying waterborne traffic paint at the film thickness requirements of this specification.

**6.0 ACCEPTANCE.** The Missouri Department of Transportation reserves the right to make field tests of material after receipt of bids, but prior to award to determine the paint's suitability for application in its equipment and for purposes of determining compliance with drying time requirements of this specification.

**6.1 STABILITY IN STORAGE.** After storage for periods up to twelve (12) months from the date of manufacture, the paint shall comply with the following requirements:

- a) The pigment shall not settle badly or cake in the container, nor shall the paint skin or thicken in storage sufficiently to cause an undesirable change in consistency, nor show spoilage.
- b) The paint shall comply with all other provisions of these specifications and be capable of being redispersed with a paddle or mixer to a smooth uniform condition of usable consistency.

**7.0 PURCHASING.** The ready-mixed paint shall be purchased by volume, one (1) gallon shall mean two hundred thirty-one (231) cubic inches at seventy-seven (77) degrees Fahrenheit.

**8.0 INSPECTION.** The successful vendor shall notify the Chemical Laboratory Director, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102 prior to start of manufacture of any paint. Should the vendor's production facility be outside of the State of Missouri, the department reserves the right to take into consideration, in determining the low bidder, the added cost of inspection at such point compared to inspection performed within the state.

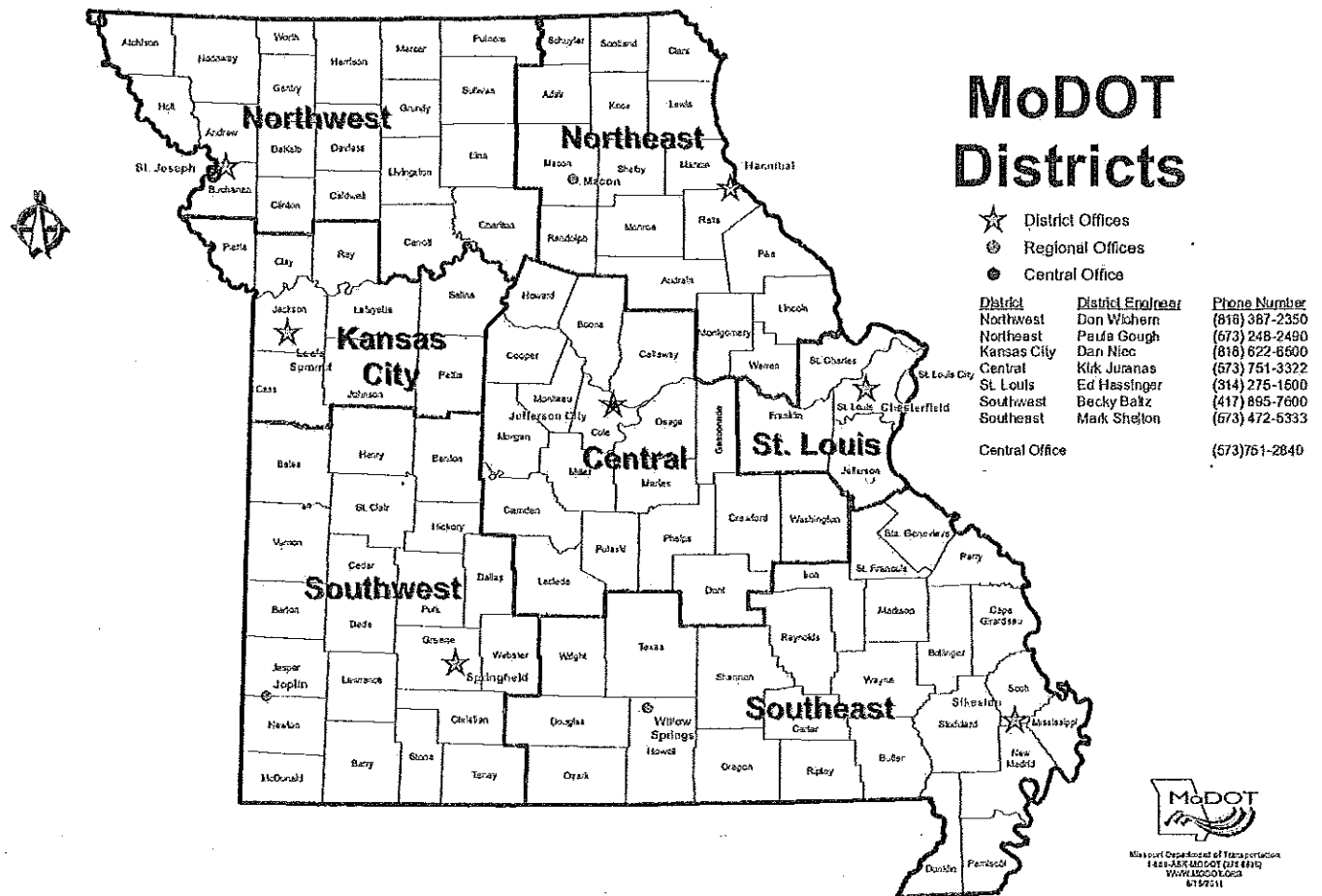
**8.1** The manufacturer shall provide, at no additional cost, standard friction-seal cans for the shipment of the finished product. The sample cans shall be lined to prevent rusting.

**8.1.1** The manufacturer shall arrange for overnight delivery of the samples to MoDOT's Central Laboratory and shall be responsible for the total cost of these shipments.

**8.2** Manufacture of the paint may be witnessed in whole or part, at the discretion of the department's inspector. Production shall not begin prior to the arrival of the department's inspector, unless prior specific approval for the starting has been obtained. The manufacturer shall provide the inspector free access to those parts of the manufacturing facility

where raw materials are stored, products are being manufactured, or finished products are being tested, and in all other ways shall facilitate the inspector in performing his duties. Finished products, when stored, shall be in an orderly fashion to permit proper and correct inventory of these materials at all times.

**8.3 Basis for Rejection.** Finished products that fail to meet any requirement of these specifications shall be subject to rejection.





## SIGNATURE AND IDENTITY OF BIDDER

The undersigned states that the correct LEGAL NAME and ADDRESS of (1) the individual Bidder, (2) each partner or joint venture (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing with the intention of binding himself to become the responsible and sole contractor) he is the agent of, and duly authorized in writing to sign for the Bidder or Bidders; and that he is signing and executing this (as indicated in the proper spaces below) as the proposal of a

☐ sole individual

☐ partnership

☐ joint venture

☐ corporation, incorporated under laws of state of \_\_\_\_\_

Dated \_\_\_\_\_.

Name of individual, all partners,  
or joint ventures:

Address of each:


doing business under the name of:

Address of principal place of business in Missouri

(If using a fictitious name, show  
this name above in addition  
to legal names)

(If a corporation, show its name above)

ATTEST: (SEAL)

Secretary

Title

(NOTE: If the Bidder is doing business under a FICTITIOUS NAME, the Proposal shall be executed in the legal name of the individual, partners, joint ventures, or corporation, with the legal address shown, and REGISTRATION OF FICTITIOUS NAME filed with the Secretary of

State, as required by Sections 417.200 to 417.230, RS Mo. If the Bidder is a CORPORATION NOT ORGANIZED UNDER THE LAWS OF MISSOURI, it shall procure a CERTIFICATE OF AUTHORITY TO DO BUSINESS IN MISSOURI, as required by Section 351.570 and following, RS Mo. A CERTIFIED COPY of such Registration of Fictitious Name or Certificate of Authority to do Business in Missouri shall be filed with the Missouri Highways and Transportation Commission, as required by the Standard specifications, Sec 102.6.6 and 102.6.7.

# VENDOR INFORMATION & PREFERENCE CERTIFICATION FORM

## Vendor Information

**All bidders must furnish ALL applicable information requested below**

Vendor Name/Mailing Address:   Email Address:	Vendor Contact Information (including area codes): Phone #: Cellular #: Fax #:
Printed Name of Responsible Officer or Employee:	Signature:
For Corporations - State in which incorporated:	For Others - State of domicile:
If the address listed in the Vendor Name/Mailing Address block above is not located in the State of Missouri, list the address of Missouri offices or places of business:	
If additional space is required, please attach an additional sheet and identify it as <u>Addresses of Missouri Offices or Places of Business</u> .	
<b>M/WBE INFORMATION:</b> List all certified Minority or Women Business Enterprises ( <u>M/WBE</u> ) utilized in the fulfillment of this bid. Include <u>percentages</u> for subcontractors and identify the M/WBE certifying agency:	
<u>M/WBE Name</u>	<u>Percentage of Contract</u>
_____	<u>M/WBE Certifying Agency</u>
_____	_____
If additional space is required, please attach an additional sheet and identify it as <u>M/WBE Information</u>	

## Preference Certification

**All bidders must furnish ALL applicable information requested below**

<b>GOODS/PRODUCTS MANUFACTURED OR PRODUCED IN USA:</b> If any or all of the goods or products offered in the attached bid which the bidder proposes to supply to the MHTC are <u>not</u> manufactured or produced in the "United States", or imported in accordance with a qualifying treaty, law, agreement, or regulation, list below, by item or item number, the country other than the United States where each good or product is manufactured or produced.	
Item (or item number)	Location Where Item is Manufactured or Produced
_____	_____
_____	_____
If additional space is required, please attach an additional sheet and identify it as <u>Location Products are Manufactured or Produced</u> .	
<b>MISSOURI SERVICE-DISABLED VETERAN BUSINESS:</b> Please complete the following if applicable. Additional information may be requested if preference is applicable. See below definitions for qualification criteria:	
<b>Service-Disabled Veteran</b> is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veterans' affairs.	
<b>Service-Disabled Veteran Business</b> is defined as a business concern:	
a. Not less than fifty-one (51) percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans; and	
b. The management and daily business operations of which are controlled by one or more service-disabled veterans.	
<u>Veteran Information</u>	<u>Business Information</u>
Service-Disabled Veteran's Name (Please Print)	Service-Disabled Veteran Business Name
_____	_____
Service-Disabled Veteran's Signature	Missouri Address of Service Disabled Veteran Business
_____	_____

### COOPERATIVE AGREEMENT NOTICE

The Department is interested in assisting Missouri governmental entities, etc. in purchasing equipment, various materials and supplies that meet the Highway and Transportation Department specifications.

Each bidder is asked to indicate below whether they would be willing to offer **Cold Weather Traffic Marking Paint** listed in the attached "Request for Bid" for sale to these local political entities at the same bid price offered to this Department.

It is understood the Department will not issue purchase orders, accept delivery nor make payment for these items ordered by any of these agencies. It is further understood the price is based on the **Cold Weather Traffic Marking Paint** meeting the Department specifications. Any added options, deletions, or extra freight costs would be negotiated between the local agency and the successful vendor.

Indicate below whether your company is willing to offer such cooperative purchasing for Missouri counties, cities or other political entities.

YES \_\_\_\_\_

NO \_\_\_\_\_

If the price varies throughout the state on Department bids because of different delivery destinations, please indicate the price f.o.b. your location that would be offered as described.

F.O.B. Location \_\_\_\_\_

Indicate the deadline date that orders will be accepted. \_\_\_\_\_

COMPANY NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

(Each vendor should complete the appropriate sections of their form and submit with their bid.)

**ANTI-COLLUSION STATEMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_ being first  
duly sworn, deposes and says that he is \_\_\_\_\_  
Title of Person Signing  
of \_\_\_\_\_

\_\_\_\_\_  
Name of Bidder

that all statements made and facts set out in the bid for the above project are true and correct; and that the bidder (The person, firm, association, or corporation making said bid) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such bid or any contract which may result from its acceptance.

Affiant further certifies that bidder is not financially interested in, or financially affiliated with, any other bidder for the above project.

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

**COLD WEATHER TRAFFIC MARKING PAINT**

**BID BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_,

as Principal and \_\_\_\_\_, as Surety are held and firmly bound unto the **STATE OF MISSOURI** (acting by and through the **Missouri Highways and Transportation Commission**) in the penal sum of:

\_\_\_\_\_ **Dollars**  
(\$ \_\_\_\_\_) to be paid to the **State of Missouri or to the Missouri Highways and Transportation Commission**, to be credited to the State Road Fund, the Principal and Surety binding themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this \_\_\_\_\_

**THE CONDITION OF THIS OBLIGATION** is such that:

**WHEREAS**, the Principal is submitting herewith a bid to the Missouri Highways and Transportation Commission for furnishing Cold Weather Traffic Marking Paint as set out in the bid to which this bond is attached.

**NOW THEREFORE**, if the Missouri Highways and Transportation Commission shall accept the bid of the Principal and if said Principal shall properly execute and deliver to the Missouri Highways and Transportation Commission the contract and contract bond in compliance with the requirements of the proposal, the specifications and the provisions of law, to the satisfaction of the Highways and Transportation Commission, then this obligation shall be void and of no effect, otherwise to remain in full force and effect.

In the event the said Principal shall, in the judgment of the Missouri Highways and Transportation Commission, fail to comply with any requirement as set forth in the preceding paragraph, then the State of Missouri acting through the Missouri Highways and Transportation Commission shall immediately and forthwith be entitled to recover the full penal sum above set out, together with court costs, attorney's fees and any other expense of recovery.

(SEAL)

\_\_\_\_\_  
Principal

By

\_\_\_\_\_  
Signature

(SEAL)

\_\_\_\_\_  
Surety

By

\_\_\_\_\_  
Attorney-in-Fact

NOTE: This bond must be executed by the PRINCIPAL and by a CORPORATE SURETY authorized to conduct surety business in the State of Missouri.

**Missouri Highways and Transportation Commission  
Standard Bid Provisions, General Terms and Conditions and Special Terms and Conditions**

**STANDARD SOLICITATION PROVISIONS**

- a. The solicitation for the procurement of the supplies referenced therein, to which these "Standard Bid Provisions, General Terms and Conditions and Special Terms and Conditions" are attached, is being issued under, and governed by, the provisions of Title 7 – Missouri Department of Transportation, Division 10 – Missouri Highways and Transportation Commission, Chapter 11 – Procurement of Supplies, of the Code of State Regulations. The Missouri Highways and Transportation Commission (MHTC), acting by and through its operating arm, the Missouri Department of Transportation (MoDOT), draws the Bidder's attention to said 7 CSR 10-11 for all the provisions governing solicitation and receipt of bids/quotes and the award of the contract pursuant to this solicitation.
- b. All bids/quotes must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

**GENERAL TERMS AND CONDITIONS**

**Definitions**

Capitalized terms as well as other terms used but not defined herein shall have the meaning assigned to them in section 7 CSR 10-11.010 Definition of Terms.

**Nondiscrimination**

- a. The Contractor shall comply with all state and federal statutes applicable to the Contractor relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).
- b. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MHTC shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
  - ii. cancellation, termination or suspension of the contract, in whole or in part.

**Contract/Purchase Order**

- a. By submitting a bid/quote, the Bidder agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's bid response, and (3) the MHTC's acceptance of the bid by post-award contract or purchase order.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized notice to proceed and/or purchase order.

**Applicable Laws and Regulations**

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri, Missouri Department of Revenue, and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MHTC a copy of their current Authority Certificate from the Secretary of State of the State of Missouri and/or a copy of their Certificate of No Tax Due from the Missouri Department of Revenue.
- c. Prior to the issuance of a purchase order and/or notice to proceed, all out-of-state Contractors **providing services** within the state of Missouri must submit to MHTC a copy of their current Transient Employer Certificate from the Missouri Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.

**Executive Order:**

The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6<sup>th</sup>) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.

- 1) "By signing this Agreement, the Contractor hereby certifies that any employee of the Contractor assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."
- 2) In the event the Contractor fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
- 3) The Contractor shall include the provisions of this paragraph in every subcontract. The Contractor shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

**Preferences**

- a. In the evaluation of bids/quotes, preferences shall be applied in accordance with 7 CSR 10-11.020(7). Contractors should apply the same preferences in selecting subcontractors. The attached document entitled "VENDOR INFORMATION AND PREFERENCE CERTIFICATION FORM" must be completed and returned with the solicitation documents.
- b. Bidders are encouraged to obtain minority business enterprise (MBE) and women business enterprise (WBE) participation in this work through the use of subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful participation for M/WBEs. Bidders are encouraged to obtain 10% MBE and 5% WBE participation.

**Missouri Highways and Transportation Commission**  
**Standard Bid Provisions, General Terms and Conditions and Special Terms and Conditions**

**Cancellation of Contract**

The MHTC may cancel the Contract at any time for a material breach of contractual obligations or for convenience by providing Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.

**Bankruptcy or Insolvency**

Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel the Agreement or affirm the Agreement and hold the Contractor responsible for damages.

**Warranty**

The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the MHTC, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.

**Status of Independent Contractor**

The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

**Non-Waiver**

If one of the parties agrees to waive its right to enforce any term of this Contract, that party does not waive its right to enforce such term at any other time or to enforce any or all other terms of this Contract.

**Indemnification**

The Contractor shall defend, indemnify and hold harmless MHTC, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Contractor's performance of its obligations under the contract awarded pursuant to this solicitation.